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EXAMINER

DURAN, ARTHUR D

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/783,899

Applicant(s)

GOTOH ET AL.

Examiner

Arthur Duran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-42 have been examined.

Response to Amendment

2. The Amendment filed on 7/10/06 is insufficient to overcome the prior rejection.

Continued Examination Under 37 CFR 1.114

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/10/06 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being obvious over Ebisawa 5,886,731 in view of Ellis (2004/0194131) in view of Muyres (2002/0002488).

As per independent claim 1, Ebisawa (the ABSTRACT; FIG. 1; FIG. 2; FIG. 4; FIG. 5B; FIG. 11; col. 2, ll. 7-30; col. 1, ll. 7-11; col. 10, ll. 27-55; and col. 8, ll. 37-41)

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discloses: *“The present invention relates to a video data receiving apparatus receiving video data, a video data transmitting apparatus transmitting video data broadcasting system distributing video data. . . . And the receiving state information data are stored by the external storing unit . . . for example, the floppy disk . . . with the user identification code data which is added to the information and transmitted. . . . The storing unit 207 is a storage means for storing the program data stream and CM data stream inputted from the communication code decoder. . . .the storing unit . . . has a storage capacity enough to store 20 minutes worth of AV data. . . . AV data of 30 seconds each is inserted . . . As a result, the output AV data becomes as shown in FIG. 5B. Namely, the viewer views a Cm of 30 seconds every 30 minutes. . . . Note that, to enable such a reception, the storing unit 207 must have a storage capacity enough to store data of at least the amount of output of the CM. . . .”* The Examiner interprets this disclosure as showing: “An advertisement supplying method, characterized in that an area for recording advertisement data is created in a large-capacity recording medium located at a user’s location, advertisement data which are to be reproduced when an audience watch a program are recorded in said area in advance of the user watching the program, and said large-capacity recording medium is thereafter provided to the user, and after creating the advertisement data in the user’s large-capacity recording medium, selectively synthesizing the program watched by the user with portions of the advertisement data previously created and stored in the user’s large-capacity recording medium.”

As per independent claim 2, Ebisawa (col. 1, ll. 30-45; the ABSTRACT; FIG. 1; FIG. 2; FIG. 4; FIG. 5B; FIG. 11; col. 2, ll. 7-30; col. 1, ll. 7-11; col. 10, ll. 27-55;

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and col. 8, ll. 37-41) discloses the features of the elements of claim 2 which is similar to claim 1.

Ebisawa lacks an explicit recitation of “a free area for recording advertisement data is created. . . .”

It would have been obvious at the time the invention was made to a person having ordinary skill in the art that the disclosure of Ebisawa (col. 1, ll. 30-45; the ABSTRACT; FIG. 1; FIG. 2; FIG. 4; FIG. 5B; FIG. 11; col. 2, ll. 7-30; col. 1, ll. 7-11; col. 10, ll. 27-55; and col. 8, ll. 37-41) shows “a free area for recording advertisement data is created. . . .” and it would have been obvious to modify and interpret the disclosure of Ebisawa cited above as showing “a free area for recording advertisement data is created. . . .”, because modification and interpretation of the cited disclosure of Ebisawa would have provided “a video data receiving apparatus which displays a program with appropriate insertions of CMs in a form in accordance with the desires of the viewer. . . .” (see Ebisawa (col. 1, ll. 45-50), based on the motivation to modify Ebisawa so as to provide “a video data transmitting apparatus which transmits CM data and program data so that a receiving apparatus displays a program with appropriate insertions of CMs in a form in accordance with the desires of the viewer. . . .” (see Ebisawa (col. 1, ll. 50-55)).

As per claims 3, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, or 36 and 37, Ebisawa shows the method of claim 1 and subsequent base claims depending from claim 1.

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Ebisawa (col. 1, ll. 30-45; the ABSTRACT; FIG. 1; FIG. 2; FIG. 4; FIG. 5B; FIG. 11; col. 2, ll. 7-30; col. 1, ll. 7-11; col. 10, ll. 27-55; and col. 8, ll. 37-41; and whole document) shows the elements of claims 3, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, or 36 and 37.

As per claims 4, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 34, 35, or 36 and 38, Ebisawa shows the method of claim 2 and subsequent base claims depending from claim 2.

Ebisawa (col. 1, ll. 30-45; the ABSTRACT; FIG. 1; FIG. 2; FIG. 4; FIG. 5B; FIG. 11; col. 2, ll. 7-30; col. 1, ll. 7-11; col. 10, ll. 27-55; and col. 8, ll. 37-41; and whole document) shows the elements of claims 4, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 34, 35, or 36 and 38.

Independent claim 39 is rejected for substantially the same reasons as independent claim 1.

As per claims 40-42, Ebisawa shows the system of claim 39.

Ebisawa (col. 1, ll. 30-45; the ABSTRACT; FIG. 1; FIG. 2; FIG. 4; FIG. 5B; FIG. 11; col. 2, ll. 7-30; col. 1, ll. 7-11; col. 10, ll. 27-55; and col. 8, ll. 37-41; and whole document) shows of the elements of claims 40-42.

Also, Ebisawa does not disclose prerecorded advertisements that are stored prior to the purchasing of the medium.

However, Ellis discloses:

Storing separate sets of advertisement data in the user's separate storage medium, prior to receiving the sets of advertisement data; after storing the separate sets of advertisement data in

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the user's storage medium, selectively synthesizing the program data received with portions of the separate sets of advertisement data; and/or

Advertisement data is first stored in the user's storage medium and subsequently the user receives a television program that also includes other sets of advertisement data; and/or

Storing, at a location separate from the user's location, the separate sets of advertisement data in the user's separate storage medium; and subsequently placing the user's separate storage medium at the user's location; receiving the sets of advertisement data and program data at the user's location, after the placing of the user's separate storage medium; and/or

Advertisement data is stored in a user's system, next (b) the user's system is placed at the user's location (for example, home), next (c) the system receives program data and advertisement data from the television broadcasting station, and finally (d) the system selectively synthesizes the program data, the advertisement data received from the broadcasting station, and the other advertisement data that was previously stored in the system at a different location; and/or

Receiving and storing advertisement data at a location other than the user's location (a store, for example). . .placing the system at the user's location and, subsequently receiving program data and other advertisement data from the television station.

Ellis discloses these features at the following citations and throughout the Ellis disclosure (Fig. 1; Fig. 22; and Paragraph 0136):

“[0136] It is to be understood that for the purpose of scheduling interactive advertisements, interactive advertisements include interactive displays which provide user help information or draw attention to advertising space. Interactive displays that provide user help information or draw attention to advertising space may be assigned a default priority. Default

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priority advertisements may reside at user television equipment (e.g., as part of the application code at set-top box 70 of FIG. 1) and may only be displayed if no other advertisements are available. For example, as shown in FIG. 22, the information stored in data table 300 provides that the interactive advertisements for "Help Text" and "Available Space" have default priority and that a day part may not be applicable to default priority advertisements. In operation according to data table 300, display screens 302 and 304 include the default priority "Help Text" and "Available Space" advertisements (respectively) because the other advertisements of higher priority have not been received yet or are scheduled for a different day part. Advertisements such as default priority advertisements may be distributed separate from other advertisements. For example, default priority advertisements may be received and stored earlier for repeated presentation over several day parts, weeks, months, etc. Default priority advertisements may be stored as part of the application or as part of non-volatile memory".

Notice in this citation from Ellis that the default advertisements are separate from the advertisements that are downloaded, that the advertisements are stored earlier than the other advertisements, and that the advertisements can be stored as part of the application or as part of non-volatile memory. Hence, the default advertisements can be stored as part of the instructions or memory that come with the hardware device itself.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Ellis earlier stored advertisements and separate more frequently downloaded advertisements to Ebisawa's downloading of advertisements and synthesizing with content. One would have been motivated to do this in order to be able to provide advertisements if no other advertisements are available.

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As a further example of this, Muyres (20020002488) discloses that advertising or marketing content or data or content or software can be preloaded/preinstalled/prestored on a variety of hardware devices prior to the device being placed at the user's location or prior to the medium being purchased by the user (below citation and throughout the Muyres disclosure):

“[0338] As was the case in describing the problems which the present invention can address in the Background Art section, the above discussion has primarily used PCs as an example. But the invention can solve problems beyond the context of just PCs. A PC is just one type of personal computerized device or system and a hard drive is just one type of primary storage unit. Those skilled in the relevant arts will readily recognize that the present invention can be used to initially provide and maintain, offer and vend, deliver or enable, configure and service digital content in a wide range of primary storage units and personal computerized systems (and potentially in small and enterprise networks as well). The examples noted, without limitation, in the Background Art section bear some reconsideration in view of this. Gaming stations, like Sony Playstation (.TM.) and Microsoft's X-box (.TM.) have a hard drive which can be pre-loaded with digitally wrapped game software, clue books, advertising, etc. The user can then view or use this, or may obtain a digital key to unwrap and promptly be able to use such. The same process works well for personal communication service (PCS) devices, television "set-top" boxes like WebTV (.TM.), Internet enabled cellular telephones; and personal digital assistants (PDAs), albeit to provide more than just game related digital content. And the same process works with "personal devices" that handle text, audio, image data and its capture, storage, playback, communication, etc.

[0340] . . . and delivery of assets 22 from the local inventory 18 is virtually

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instantaneous, is guaranteed, and is free. In sum, the customers 40 may receive superior service, gain confidence in, and have access to what they want (which as described below, can be pre-loaded, and even default configured, i.e., virtually assuring that it will work)."

Also, the following citations from Muyres are also relevant to the above features of the Applicant's claims (Muyres; Abstract; Paragraphs [60, 61, 208, 209, 325, 328, 329, 4, 56]; claim 15).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Muyres' preloaded content onto a variety of hardware devices prior to the device being placed at the user's location to Ellis' default advertisements that are separate from the advertisements that are downloaded, and that are stored earlier than the other advertisements, and that can be stored as part of the application code or as part of non-volatile memory. One would have been motivated to do this in order to provide default advertisements that are ready for display/utilization.

Response to Arguments

4. Applicant's arguments with respect to claims 1-42 have been considered but are not found persuasive.

On page 12 of the Applications Remarks/Arguments dated 7/10/2006, Applicant states that the combination of the prior art does not render obvious, "prior to receiving. . .and subsequently placing. . .wherein the advertisement data is stored in the user's large capacity recording medium, prior to purchase of such medium by the user".

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However, the combination of the prior art renders these features obvious. Please see the rejection above to see how the combination of Ebisawa, Ellis, and Muyres renders obvious the above and the that the advertisement data is stored in the user's large capacity recording medium, prior to purchasing of such medium by the user. Also, please especially note the Muyres reference which discloses that the advertisements are stored on the medium prior to purchasing of such medium by the user.

Also, Examiner notes that while specific references were made to the prior art, it is actually also the prior art in its entirety and the combination of the prior art in its entirety that is being referred to. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Hence, it is the combination of Ebisawa, Ellis, and Muyres that renders obvious the features of the Applicant's claims.

Also, on page 15 of the Applicant's Amendment, Applicant presents arguments against the Muyres references. Examiner notes that Applicant does not refer to the citations from the Muyres reference in the rejection above. Rather, Applicant has chosen other citations from Muyres to present arguments against. And, Applicant has not presented any arguments or remarks on the citations from Muyres that were actually cited by the Examiner as relevant to the Applicant's claims. And, in response to Applicant's arguments that Muyres teaches away, Examiner notes that teaching of several options or of a preference does not constitute a teaching away from the proposed combination under review. See *In re Fulton*, 391 F.3d 1195, 1199-1200, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004). And, the entirety of the Muyres reference is available

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as prior art. The Background of the Invention (which the Applicant cited) is but one section of the Muyres reference. The entire Muyres reference is available as prior art and the Examiner has chosen particular sections of Muyres as disclosing features relevant to the Applicant's claims.

And, Muyres discloses (as Applicant states on page 15 with steps (a), (b), and (c)) that the advertisement is stored on the medium and then, subsequently, purchased and then placed at the user's location. Also, Muyres discloses that the DCVM includes advertising content and also that the DCVM advertising can be pre-stored/pre-installed prior to purchase and/or that the DCVM can be updated dynamically (Muyres, [338, 340] from the rejection above, and also the below citations):

"The DCVM contains an infrastructure and an inventory of digital content, which includes advertisements. The infrastructure and inventory may both be stored in a hard drive, or the inventory may instead be stored on a removable media, such as a CD, DVD, or tape. Customers shop in a plurality of stores operated by vendors and the advertising is then presented to them. A master server may also be provided to update the infrastructure and inventory, particularly including advertisements into the inventory (Abstract).

[0060] In one preferred embodiment, initial delivery of the infrastructure 16 is on the hard drives of new PCs 14. However, the DCVM 10 may also be "delivered" on a new hard drive 20 used for upgrading an existing PC 14. Or it may even be delivered via conventional software installation by loading it from removable media 24 into the PC 14, or by downloading it from an online source and then installing it (a newer installation technique becoming common today).

[0061] Initial delivery of the inventory 18 may similarly be in pre-loaded format on the hard drive 20, or by provision on removable media 24 which is then placed as needed into the PC 14 for access by the infrastructure 16 (typically depending upon the capacity of the hard drive 20).

[0208] Two categories of digital content will be offered via the DCVM 10: "softgoods" and "hardgoods." Softgoods encompasses any intellectual property (IP) that can be made available to the end customer either through pre-positioned content (IP that is already at the client 12, including the assets 22 of the local inventory 18), or through electronic download (e.g., from the master inventory 104 or collateral). All softgoods will have been

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wrapped (e.g., encrypted) or trial injected and will need to be unwrapped (decrypted) as part of the fulfillment process. Unwrapping softgoods can be made to always require an electronic or digital key 60. That key is delivered to the customer transparently, via download to the client 12, or non-transparently via email, fax, or postal mail, or by voice. FIG. 2b provides a general overview of this.

[0209] Hardgoods encompasses all goods that require the IP, or the hardware itself to be physically provided to the customer. This definition includes software, when it is requested as an SKU from the original manufacturer. No provision (such as a custom CD) need typically be made for hardgoods delivery of digital content that exists only in softgoods electronic form.

[0325] Since the DCVM 10 comes pre-installed in a new PC 14, or on a hard drive 20 which is later installed, the PDO may be functioning the very moment the system enters its normal operating mode. A user thus may perceive a visible and audible presence provided by the infrastructure 16 as soon as the PC 14 completes its power-up boot sequence. This is an excellent mechanism to introduce and educate inexperienced users on a new PC 14, or to welcome them as customers 40 to the stores 44 and the services of the village 46.

[0328] Previously existing PDOs also have not been truly pre-installed. Instead they require complex setup, either as an operation following operating system installation or at some later time. Notably, few if any PCs are provided to end users with PDOs operable. Microsoft's Active Desktop (.TM.) provides a good example. Its basic functionality may be turned on during operating system installation, but specific PDOs then have to be chosen and enabled in a set-up operation that is daunting to even many experienced computer users. This is not "manufacturing" level pre-installation; it is post installation "configuration," and it necessarily must be done by the end user or a party acting under their instruction for the end user to receive an acceptable result.

[0329] Content presented by such PDOs also has to be loaded. It is not initially present and, while an initial presentation (typically a welcome in the form of a web page) may be loadable from removable media, any digital content actually usable by the user must be retrieved over a communication link from a remote computer system. Furthermore, it should be noted that the initial web page presentations here are not PDOs at this stage. The user must select and enable specific PDOs related (or not) to the initial web page presentations. The end result of all of this may be very powerful, but often too powerful. It is unduly daunting to computer users, and it is just not pre-installed.

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[Claim] 15. A computer program, embodied on a computer readable storage medium, for providing offline advertising on a personal computerized system having a display unit and a primary storage unit, the computer program comprising: (a) a code segment that generates a viewable window on the display unit, wherein said viewable window includes at least one position; (b) a code segment that retrieves a said ad from a campaign set which has been pre-stored in the primary storage unit, based on its respective said deployment attributes; and (c) a code segment that presents said ad in said position, thereby permitting a user of the personal computerized system to view said ad.”

Also, in terms of Applicant’s feature (d) on page 15, please see the combination of the prior art in the rejection above to see how the program and advertisement data are synthesized. Also, note that it is the combination of the prior art which renders the features of the Applicant’s claims obvious.

Also, please do note that Muyres discloses broadcast content and that the DCVM (advertising content) can be pre-installed and/or dynamically updated (above citations concerning pre-installing and also the below) for presentation to the user and that informational content and advertising content can be presented to the user at the same time (Fig. 12a, 12b; and below citations):

“[0004] Somewhat less widely appreciated is that many services are now also digital to a considerable extent. For example, computer users today let applets run tests and communicate the results to providers for obtaining installation, upgrade, and problem diagnosis of operating system and applications software; computer game players send each other hints via e-mail; and Internet "telephone," "radio," and "television" are emerging as replacements for specialized telephone and broadcast systems. Thus, often to a considerable extent services today can be reduced to digital communications, and can then also be treated as BOBs, in a somewhat more dynamic sense.

[0056] In contrast, the inventory 18 is relatively dynamic, potentially including assets 22 such as computer software products, music, audio books, video, and anything else which can be reduced to digital format and

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electronically transmitted and stored. The inventory 18 may be loaded on a local device, or it may also be accessible over a LAN having an appropriate bandwidth, since storage capacity and transfer rate are more important than responsiveness for it.”

Again, please note that the Examiner has made particular citations to the prior art to demonstrate how the prior art renders obvious the features of the Applicant’s claims.

And, the combination of the prior art, as demonstrated in the rejection and Response to Arguments above, renders obvious the features of the Applicant’s claims.

Also, Examiner further notes that it is the Applicant’s claims as stated in the Applicant’s claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Arthur Duran
Primary Examiner
8/1/2006